

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1666 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIPBHAI KANAIIYALAL BATAKWALA

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR MR ANAND, PP with MR ND GOHIL, APP for
Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/02/97

ORAL JUDGEMENT

The petitioner, an externee under the impugned order dated 23/6/1996 (Annexure : D) passed by Respondent No.1, has preferred this petition challenging the said order as well as the Appellate order dated 23/10/1996 (Annexure : E) passed by respondent No.2 on number of grounds, inter alia, on the ground appearing in

Ground : (E) at Pages : 5 & 6 of the petition. The said ground would read as under :

"The petitioner submits that the last registered case against the petitioner is dated 27/2/1995 and thereafter, there was not a single case registered against the externnee. However, certain statements of the witnesses were collected which refers to the incidents of 30/1/1995, 18/1/1995, 5/2/1995 and 18/2/1995 and the show cause notice came to be issued only on 4/7/1995 and the impugned order of externment came to be passed only on 23/6/1996. Thus, there is long, unexplained and unreasonable delay in issuing the show cause notice Annexure-B as well as in passing the impugned order of externment. The petitioner submits that looking to the language of section 56 of the Act, the externment order can be passed only when....

- (i) that the movement or acts of any person are causing or calculated to cause alarm, danger or harm to person or property; or
- (ii) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of offence punishable under Chapter 12, 16 or 17 of the Indian Penal Code or in the abetment of such offence and when in the opinion of such officer, the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards safety of that person and property...

The petitioner submits that looking to the facts and circumstances of the present case, aforesaid condition precedent for passing the order of externment stipulated by Section 56 of the Act is totally missing and after such long period of time, it cannot be said that the movements or acts of the petitioner are causing or calculated to cause alarm or danger nor it can be said that the petitioner is engaged or is about to be engaged in the commission of offence as stated in section 56 of the Act and, therefore, the impugned order of externment passed against the petitioner is without any authority of law. Even looking to such delay, it is clear that the

grounds have become stale and illusory and the object behind passing the order of externment and the so-called activities of the petitioner is snapped and, therefore, the impugned order of externment passed against the petitioner is absolutely illegal and void-ab-initio."

2. Rule returnable within two weeks was issued on 19/12/1996. No Affidavit in Reply has been filed by the respondents. In order to substantiate the aforesaid ground which contains within it the facts with regard to delay, it has been submitted on behalf of the petitioner that in fact the show cause notice was issued on 4/7/1995 and the proceedings were held before the first mentioned Authority. Such proceeding lasted upto 21/10/1995 and it is thereafter that the matter was kept over and was adjourned from time to time for a period of nearly seven months and only on 23/6/1996 the impugned order of externment was passed. In order to canvass the point of delay Mr. N.M. Kapadia, learned Advocate for the petitioner has placed reliance upon a decision of this Court dated 10/12/1996 in the case between Sitaben M. Thakore V/s. Commissioner of Police in Special Criminal Application No. 63 of 1996 (Coram : N.N.Mathur, J.). The submission before the Court in that case was that the order of externment was passed after a long lapse of time which snapped the live link in between the past acts committed by the the concerned petitioner and the order of externment impugned by him.

3. In the present case it has been submitted on behalf of the respondents, by making a reference to the file, that in order to give fullest opportunity to the petitioner adjournments from time to time were granted and that has resulted in passing of the order at a belated point of time. On a reference to the aforesaid decision rendered by this Court it can be seen that there also similar submissions were made for explaining the delay, although by Affidavit. This Court considered the provisions of Section 56 and onwards of the Bombay Police Act and observed as under :

8. Section 56 of the Bombay Police Act empowers the authority empowered by the State Government to pass an order for removal of a person on the satisfaction that :- (a) the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are

reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regard the safety of their person or the property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant.

9. On the reading of the aforesaid provisions, it is clear that, on reasonable grounds for believing that the person is engaged or about to be engaged in the commission of offence and further the witnesses are not willing to come forward is the important consideration for the purpose of passing an order under Section 56. The words in the section 'is engaged or is about to be engaged' refers to the present activity and continued one. It does not refer to a matter of past, meaning thereby that on finding that the activity of the person, the action arose as to what is the immediate near. The question may again arise as to what is the immediate near. If a person is directed or is required to be prevented from committing acts of violence which he alleged to be repeatedly doing so, then the 'immediate near' would mean, 'within reasonable time.' Such reasonable time cannot be the long period of six months or one year.

10. In an unreported Judgment of Division Bench of this Court (Coram : K.J.Vaidhya and S.D.Dave, JJ) being Special Civil Application No.1295/94 decided on 24.01.1995, 'reasonable period' has been indicated as of 'six months'. In the said case, the externee was found to be guilty for delay in externment proceedings, but still the Court observed as follows :

"The idea behind the concept appears to be a two fold one : firstly, send out a man who is engaged in antisocial activities in a particular area, and secondly: save the area and the people residing therein from a person and his illegal activities. The whole idea is to

destroy an established net work which an under world element has been able to create in a particular locality. This very idea revolving around the above said provisions of Bombay Police Act, 1951, makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

Thus, whosoever may be the responsible whether the externee or the authority for delay of the proceedings, the very purpose of the exercise of powers under section 58 are frustrated if the same is not exercised within a 'reasonable period', because the grounds which existed for externment which required an immediate action, cannot be said to have continued for a long period."

4. As in the case of Sitaben (Supra), here also it has been submitted that if sufficient opportunity was not made available to the petitioner it would be submitted that principles of natural justice have been violated. This Court in the aforesaid decision observed that rule of natural justice could not be unnaturally expanded and that the proceeding of externment being of a summary nature requires to be regulated with care and caution by the concerned Authorities. Reference was made by this Court in that decision to a decision of the Apex Court in Swadeshi Cotton Mill V/s. Union of India, reported in AIR 1981 SC 818, inter-alia holding that -

"The audi alteram partem rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure) this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case."

5. This Court has also made a reference to another decision of the Apex Court in the case of Board of Mining Examination V/s. Ramjee, reported in AIR 1977 SC 965. Referring to the observation of the Apex Court that

natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all, it has been stated that unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating.

6. Dealing with the facts so as to explain the delay this Court held that the inquiry under Section 59 of the Act being of urgent nature only a short notice of 3 to 7 days may be given for submitting the written statement, and after immediately fixing the date for examination of witnesses and continuously completing the evidence the matter might be disposed of in that manner. Following observations deserve a note to be made here also for the authorities to bear the same in mind in future cases :

"Though in the Division Bench Judgment, it is expressed that the enquiry should be completed within a period of six months, it only provides an outer limit in extreme cases. No definite period of inquiry can be provided, it depends upon the facts of each case. If there is a long delay in passing the orders of externment after the issuance of show cause notice, the externment authority cannot reasonably come to conclusion that the movement or the acts of the externnee are causing or calculated to cause alarm, danger or harm to person or property, so as to prevent him to moving himself from certain areas."

7. In my opinion the aforesaid decision of this Court would squarely apply to the facts of the present case and it will not be necessary to go to other grounds of challenge to the impugned order of externment and the Appellate order. The conclusion is that the externing authority can reasonably said to have failed to regulate the proceeding in true spirit of the provisions of Section 59 of the Act as has been observed in the aforesaid case. The same conclusion would follow.

8. In view of what is stated above, this Special Criminal Application is allowed. The impugned order of externment dated 23/6/1996 and the order of confirmation passed in Appeal by the Appellate Authority on 23/10/1996 are hereby quashed and set aside. Rule made absolute accordingly.

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